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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. ~~240~~ 45

FEDERAL POWER COMMISSION,
Petitioner,

against

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THE CITY OF NEW YORK,
Respondents.

No. ~~240~~ 46

NATIONAL COAL ASSOCIATION, UNITED MINE WORKERS OF AMERICA, FUELS RESEARCH COUNCIL, INC.,
Petitioners,

against

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THE CITY OF NEW YORK,
Respondents.

BRIEF OF THE RESPONDENT, THE CITY OF NEW YORK, IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

FEDERAL POWER COMMISSION, *Petitioner,* *against* TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THE CITY OF NEW YORK, *Respondents.*	No. 748
NATIONAL COAL ASSOCIATION, UNITED MINE WORKERS OF AMERICA, FUELS RESEARCH COUNCIL, INC., *Petitioners,* *against* TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND THE CITY OF NEW YORK, *Respondents.*	No. 749

REASONS FOR DENYING THE WRIT

This Brief in opposition to the Petitions for a Writ of Certiorari herein is filed on behalf of the City of New York.

The interest of the City of New York in this case is substantial and immediate. Denial of the writ will mean that the benefits of the natural gas to be transported under the disputed arrangement will be made available at the earliest opportunity. These benefits involve the health and comfort of people in the area surrounding the Waterside

plant of Consolidated Edison Company of New York, Inc. (Con Edison), which benefits were so amply demonstrated in the hearings before the Federal Power Commission (R. 36a-54a). It is this public interest for which the City of New York intervened (R. 39a) and now urges upon this Court as one of the reasons for denial of the petitions herein. The other respondents argue additional reasons.

The Waterside plant is located at 40th Street and the East River in Manhattan. The record shows coal burned under the boilers at Waterside results in the emission of 27,000 lbs. of fly ash and more than 42,000 lbs. of sulphur dioxide from the stacks of the Waterside station each day (R. 27a, 41a, 42a). This in turn results in a sootfall in the vicinity of the Waterside plant that is approximately 20 tons per square mile heavier than the average for the City (R. 51a-52a). In this vicinity, concentrated in the area of one-half square mile, are 66 buildings more than 18 stories in height (R. 42a). Among these are the United Nations buildings, modern residential apartments like Tudor City, which is adjacent to the Waterside station, and many other large and important buildings including Grand Central Terminal, various hotels, two of the largest printing and publishing establishments in the United States and many foreign consulates and legations (R. 14a, 42a). As the number and height of the buildings in the Waterside area has increased there has been a corresponding increase in the number of persons exposed to the plant's stack emissions.

As long ago as 1950, when the 41 story United Nations building just to the north of the Waterside station was being constructed, Trygve Lie, then Secretary General of the United Nations, complained to the Mayor about the gas and smog nuisance caused by the Waterside plant and characterized it as "a serious and potentially dangerous condition" (R. 47a). The Mayor appealed to President Truman but no relief through the use of natural gas was obtainable at that time (R. 159a-163a). Since that time there have been numerous individual complaints, particularly from the residential Tudor City apartments immediately adjacent to the

plant. These complaints concerning the dust, fly ash and sulphurous odors from the Waterside stacks culminated in a petition sent to the Mayor from 1,855 tenants.

Con Edison testified that it has spent more than $45,000,000 on the reduction of stack emissions and of this amount $3,600,000 has been spent at Waterside alone (R. 8a, 49a, 50a). Mechanical dust collectors in series with electric precipitators were installed in the Waterside station between 1953 and 1955 to the point where, because of space limitations, it would not be feasible to add any additional dust collecting devices (R. 90a). Yet, these efforts failed to solve the problem.

The seriousness of this situation was testified to at the Federal Power Commission hearings by Dr. Leonard Greenburg, then Commissioner of the Department of Air Pollution Control of the City of New York. Dr. Greenburg, a licensed engineer, a licensed physician and the possessor of a Ph.D. in public health, is a distinguished expert in the field of air pollution control (R. 36a-39a). It was Dr. Greenburg's uncontroverted testimony that the health of persons living in the metropolitan area may be adversely affected by air pollution—especially those who are subject to asthma and certain lung impairments, and there is at least a suspicion that air pollution may contribute to the increase of lung cancer and some forms of heart disease. In addition, such pollution results in economic losses. Buildings, painting, finishes, textiles, vehicles, clothing and other items are damaged by air pollution and the cleaning costs are substantially increased thereby. Flights of aircraft are hampered by the poor visibility which results from air pollution and this creates potential hazards at some of the largest and busiest airports in the world (R. 40a).

Dr. Greenburg concluded that the only practical solution to the Waterside stack emission problem was the use of natural gas (R. 50a). He stated:

> "• • • [W]e must not overlook the fact that the very air we breathe is perhaps our most precious natural resource. This is not replaceable. We live

in an envelope of air and we cannot afford to have our atmosphere become polluted to any great degree. The ingenuity of man can find and develop many sources of power and many sources of food, but there is no substitute for the atmosphere in which we live and work. Air pollution cannot continue to remain an uncontrolled problem. Depletion of this natural resource must be avoided at all costs." (R. 53a)

"We have considered this problem at great length, we live with it each day, and a good part of the night, and have for a long time. And as a result, we are firmly convinced that the health and comfort of the citizens of this city, including not only those in the immediate vicinity of these power plants, but those further away as well, requires the consent of your Commission to the transportation of gas for use in these power plants.

"If the Federal Power Commission wishes to aid the people of the City of New York, and at the same time carry out the expressed intent of Congress in the reduction of air pollution, the approval of the use of gas as requested in the proceedings being heard here is one of the most significant ways in which the Commission can make a constructive contribution to the welfare of the people of New York City." (R. 54a)

These are facts of record which delineate a paramount aspect of the public interest. Ranged against such facts are the predictions of Petitioners as to the possible effect of the lower Court's decision upon natural gas rates.

In addition to the facts of record, it is significant to note the action taken by the Federal Government in recognition of the growing air pollution problem and its importance as a matter of national concern. In enacting the Air Pollution Control law, the Congress cited the dangers to the public health and welfare from air pollution and committed the Federal Government to undertake research programs and to provide technical services and financial aid to the States and local governments. As first enacted in 1955 (69 Stat. 322, 42 U. S. C. § 1857 to § 1857f), it was amended in 1959

(73 Stat. 646, 42 U. S. C. § 1857 to § 1857g) to include, among other things, an extension of the appropriation for the furtherance of the Congressional policy until 1964.

From what has been said, it is clear that the use of natural gas as fuel in the boilers of Con Edison's Waterside station will tend to eliminate the dangers of air pollution and safeguard public health and welfare in one of the most densely populated areas in the world.

CONCLUSION

In view of the compelling public need for the disputed service, it is urged that the Petitions for Writ of Certiorari be denied.

Respectfully submitted,

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